

BOISEY LEVERN NEAL
Petitioner,

v.

STATE of MARYLAND
Respondent,

* **IN THE**
*
* **CIRCUIT COURT**
*
* **FOR**
*
* **ANNE ARUNDEL COUNTY**
*
* **CASE NO. K-2007-001393**

PETITION TO CORRECT ILLEGAL SENTENCE

BOISEY NEAL; Petitioner proceeding pro se, hereby petitions this Honorable Court; pursuant to **MD RULE 2-311**, and **ACM, Criminal Procedure Art. §6-218**, for an ORDER, and Amended Commitment Record, correcting the illegal sentence imposed by this Court, to include **527 days** pretrial detention [time served] credit which accrued prior to the sentencing date in this instant criminal action, and in support hereof, affirms under the penalty of perjury the following to be true and correct to the best of his information, knowledge and belief, and states:

PROCEDURAL/FACTUAL HISTORY

1. Petitioner is an inmate confined to the custody of the [DPSCS/DOC] Commissioner of Correction; under the identification numbers **[DOC] #349871/ [SID] #978847**, as a result of the conviction and sentence imposed in the instant criminal action.

2. On **October 18, 2006**, Petitioner was placed in pretrial detention custody subsequent to arrest, pending the resolution of the instant criminal action.
3. On March 28, 2008, Petitioner was sentenced to 30 years; SAB 15 years, and 5 years probation upon release, with credit for [pretrial detention] time served for **288 days**. To begin on **June 14, 2007**.

AGRUMENT

The wording and judicial interpretation of *ACM, Criminal Procedure Art. §6-218*, clearly establishes that a criminal defendant *must* receive credit towards his sentence for *all* time served in pretrial detention custody upon conviction and sentence in the underlying criminal action. Moreover, the language of §6-218 (b), indicates that the application of *all* pretrial detention [time served] credits is mandatory; not discretionary; to wit: *ACM, Criminal Procedure Art. §6-218 Credit against sentence for time spent in custody* states:

(b) In general.-

*(1) A defendant who is convicted and sentenced **shall** receive credit against and a reduction of the term of a definite or life sentence, or the minimum and maximum terms of an indeterminate sentence, for all time spent in the custody of a correctional facility, hospital, facility for persons with mental disorders, or other unit because of:*

(i) the charge for which the sentence is imposed; or

(ii) the conduct on which the charge is based; ... and

(e) Credit awarded at sentencing.-

(1) The court shall award the credit required by this section at the time of sentencing.

Judicial interpretation has consistently held this statute to be mandatory; i.e. *non-discretionary*, noting that, “[*Criminal Procedure Art. §6-218*] demonstrates a legislative policy of fairness and is an effort to avoid inequitable stacking of punishment that could result in actual service of a period of imprisonment longer than the sentence imposed by the trial court.” *Maus v. State*, 311 Md. 85, 532 A.2d 1066 (1987). Moreover, “A purpose of the credit statute is the elimination of “dead” time, which is time spent in custody that will not be credited to any valid sentence; by enacting former Art. 27, 638C(a) (now subsection (b) of this section), the General Assembly sought to ensure that a defendant receive as much credit as possible for time spent in custody as is consistent with constitutional and practical considerations.” *Chavis v. Smith*, 834 F. Supp. 153 (D. Md. 1993). See Also *Dedo v. State*, 343 Md. 2, 680 A.2d 464 (1996); *Wilson v. Simms*, 157 Md. App. 82, 849 A.2d 88 (2004), cert. denied, 382 Md. 687, 856 A.2d 723 (2004); and *Parker v. State*, 193 Md. App. 469, 997 A.2d 912 (2010).

CONCLUSION

Having established the mandatory nature of this statute; i.e. “Trial court must give a defendant credit for a period of pre-trial incarceration on the charge for which defendant was held.” *Stevenson v. State*, 180 Md. App. 440, 951 A.2d 875 (2008), Petitioner prays this Court, in the interest and furtherance of justice, to take immediate corrective action in issuing an *Amended Commitment Record* to include credit for 527 days pretrial detention time served

WHEREFORE, for the foregoing reasons, Petitioner prays this Honorable Court for an ORDER, and Amended Commitment Record, granting him include **527 days** pretrial detention [time served] credit, and for any such other or further relief as this Court deems just equitable and proper.

Respectfully submitted,

Boisey Neal

Boisey Neal

BOISEY NEAL ^{DOC} #349871/ ^{SID} #978847

Petitioner Pro Se

MCTC – 18800 ROXBURY ROAD

HAGERSTOWN, MD 21746-1001

Cc/File

CERTIFICATE OF NON- ELECTRONIC FILING

I HEREBY CERTIFY that on this 12 day of December, 2017, the original of the foregoing ***PETITION TO CORRECT ILLEGAL SENTENCE*** was filed; via first class prepaid postage, with the Clerk of the Circuit Court for Anne Arundel County.

Boisey Neal

BOISEY NEAL

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12 day of December, 2017, a true copy of the foregoing ***PETITION TO CORRECT ILLEGAL SENTENCE*** was served; via first class prepaid postage, upon the State's Attorney for Anne Arundel County.

Boisey Neal

BOISEY NEAL